

Sep 20, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JEFFREY F.,¹

Plaintiff,

v.

KILOLO KIJAKAZI, ACTING
COMMISSIONER OF SOCIAL
SECURITY,²

Defendant.

No. 2:20-CV-00429-ACE

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

ECF No. 17, 18

BEFORE THE COURT are cross-motions for summary judgment. ECF No. 17, 18. Attorney Christopher H. Dellert represents Jeffrey F. (Plaintiff); Special Assistant United States Attorney Danielle R. Mroczek represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 6. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

¹To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names. *See* LCivR 5.2(c).

²Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi is substituted for Andrew M. Saul as the defendant in this suit. No further action need be taken to continue this suit. *See* 42 U.S.C. § 405(g).

JURISDICTION

Plaintiff filed an application for Supplemental Security Income alleging disability since October 1, 2017, due to “Irritation, Mood Swings, Bipolar, and Autism Spectrum Disorder.” Tr. 208. The application was denied initially and upon reconsideration. Administrative Law Judge (ALJ) Timothy Mangrum held a hearing on February 6, 2020, Tr. 31-49, and issued an unfavorable decision on March 27, 2020, Tr. 15-25. The Appeals Council denied Plaintiff’s request for review on October 15, 2020. Tr. 1-6. The ALJ’s March 2020 decision thus became the final decision of the Commissioner, which is appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review on November 23, 2020. ECF No. 1.

STATEMENT OF FACTS

Plaintiff was born on March 23, 1996, Tr. 171, and was 22 years old on the amended disability onset date, November 2, 2018, Tr. 34. He completed high school and a carpentry training program through Job Corps. Tr. 209. Plaintiff’s disability report indicates he stopped working on October 31, 2017, because of his conditions. Tr. 208. Plaintiff testified at the administrative hearing that the main reason he was not able to work would most likely be his occasional, very intense outbursts of emotion. Tr. 35-36.

Plaintiff testified he sometimes feels depressed, Tr. 37; he was usually able to bathe, brush his teeth, comb his hair and perform household tasks like doing the dishes and vacuuming, Tr. 37; he sometimes had difficulty leaving his house, Tr. 38; handling change in his routine had recently not been a big problem because his schedule was open, but he was sometimes easily distracted, Tr. 38-39; and he sometimes had difficulty with memory and completing projects, Tr. 40. At the time of the hearing, he was not taking any medications for his symptoms. Tr. 42.

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STANDARD OF REVIEW

The ALJ is tasked with “determining credibility, resolving conflicts in medical testimony, and resolving ambiguities.” *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The ALJ’s determinations of law are reviewed *de novo*, with deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only if it is not supported by substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put another way, substantial evidence “is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971), quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938). If the evidence is susceptible to more than one rational interpretation, the Court may not substitute its judgment for that of the ALJ. *Tackett*, 180 F.3d at 1098; *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the administrative findings, or if conflicting evidence supports a finding of either disability or non-disability, the ALJ’s determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision supported by substantial evidence will be set aside if the proper legal standards were not applied in weighing the evidence and making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

SEQUENTIAL EVALUATION PROCESS

The Commissioner has established a five-step sequential evaluation process for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the claimant bears the burden of establishing a prima facie case of disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is met once a claimant establishes that a

1 physical or mental impairment prevents the claimant from engaging in past
2 relevant work. 20 C.F.R. § 416.920(a)(4). If a claimant cannot perform past
3 relevant work, the ALJ proceeds to step five, and the burden shifts to the
4 Commissioner to show (1) that Plaintiff can perform other substantial gainful
5 activity and (2) that a significant number of jobs exist in the national economy
6 which Plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1497-1498 (9th Cir.
7 1984). If a claimant cannot make an adjustment to other work in the national
8 economy, the claimant will be found disabled. 20 C.F.R. § 416.920(a)(4)(v).

9 ADMINISTRATIVE DECISION

10 On March 27, 2020, the ALJ issued a decision finding Plaintiff was not
11 disabled as defined in the Social Security Act.

12 At step one, the ALJ found Plaintiff had not engaged in substantial gainful
13 activity since November 2, 2018, the disability application date. Tr. 17.

14 At step two, the ALJ determined Plaintiff had the following severe
15 impairments: depression, anxiety, and obesity. Tr. 17.

16 At step three, the ALJ found Plaintiff did not have an impairment or
17 combination of impairments that meets or medically equals the severity of one of
18 the listed impairments. Tr. 18.

19 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found
20 Plaintiff could perform a full range of work at all exertional limitations with the
21 following non-exertional limitations: he will be off task and not productive 10% of
22 the workday; he can perform some detailed instructions and tasks; he can have no
23 interaction with the general public; and he can have only incidental contact with
24 coworkers. Tr. 20.

25 At step four, the ALJ found Plaintiff was not able to perform any past
26 relevant work. Tr. 23.

27 At step five, the ALJ determined that, based on the testimony of the
28 vocational expert, and considering Plaintiff's age, education, work experience, and

1 RFC, Plaintiff was capable of making a successful adjustment to other work that
2 exists in significant numbers in the national economy, including the jobs of lumber
3 handler, commercial cleaner, and laborer landscape. Tr. 23-25.

4 The ALJ thus concluded Plaintiff was not under a disability within the
5 meaning of the Social Security Act at any time from November 2, 2018, the
6 disability application date, through the date of the ALJ's decision, March 27, 2020.
7 Tr. 24-25.

8 ISSUES

9 The question presented is whether substantial evidence supports the ALJ's
10 decision denying benefits and, if so, whether that decision is based on proper legal
11 standards.

12 Plaintiff asserts the issues before the Court are whether the ALJ erred:
13 (1) in his consideration of Plaintiff's subjective allegations; and (2) in his weighing
14 of the opinions of the examining medical source. ECF No. 17 at 2.

15 DISCUSSION

16 A. W. Douglas Uhl, Psy.D.

17 Plaintiff contends the ALJ erred by failing to give legally sufficient reasons
18 for rejecting the medical opinions of W. Douglas Uhl, Psy.D. ECF No. 17 at
19 12-16. Defendant responds that the ALJ reasonably determined the marked
20 limitations assessed by Dr. Uhl were unpersuasive. ECF No. 18 at 9-15.

21 For claims filed on or after March 27, 2017, new regulations apply that
22 change the framework for how an ALJ must weigh medical opinion evidence.
23 *Revisions to Rules Regarding the Evaluation of Medical Evidence*, 2017 WL
24 168819, 82 Fed. Reg. 5844-01 (Jan. 18, 2017); 20 C.F.R. § 416.920c. The new
25 regulations provide the ALJ will no longer give any specific evidentiary weight to
26 medical opinions or prior administrative medical findings, including those from
27 treating medical sources. 20 C.F.R. § 416.920c(a). Instead, the ALJ will consider
28 the persuasiveness of each medical opinion and prior administrative medical

1 finding, regardless of whether the medical source is an acceptable medical source.
2 20 C.F.R. § 416.920c(c). The ALJ is required to consider multiple factors,
3 including supportability, consistency, the source's relationship with the claimant,
4 any specialization of the source, and other factors (such as the source's familiarity
5 with other evidence in the file or an understanding of Social Security's disability
6 program). *Id.* The regulations make clear that the supportability and consistency
7 of the opinion are the most important factors, and the ALJ must articulate how they
8 considered those factors in determining the persuasiveness of each medical opinion
9 or prior administrative medical finding. 20 C.F.R. § 416.920a(b). The ALJ may
10 explain how they considered the other factors, but the ALJ is not required to except
11 in cases where two or more opinions are equally well-supported and consistent
12 with the record. *Id.*

13 Supportability and consistency are further explained in the regulations as
14 follows:

15 (1) *Supportability*. The more relevant the objective medical evidence
16 and supporting explanations presented by a medical source are to
17 support his or her medical opinion(s) or prior administrative medical
18 finding(s), the more persuasive the medical opinions or prior
19 administrative medical finding(s) will be.

20 (2) *Consistency*. The more consistent a medical opinion(s) or prior
21 administrative medical finding(s) is with the evidence from other
22 medical sources and nonmedical sources in the claim, the more
23 persuasive the medical opinion(s) or prior administrative medical
24 finding(s) will be.

25 20 C.F.R. § 416.920c(c).

26 On January 22, 2018, Dr. Uhl completed a mental status examination of
27 Plaintiff and filled out a Psychological/Psychiatric Evaluation form. Tr. 345-350.
28 Dr. Uhl noted Plaintiff reported panic attacks in almost every new situation and
was taking anti-depressant medication for depression symptoms. Tr. 347. Dr. Uhl

1 diagnosed Bipolar I Disorder, most recent episode depressed; panic disorder; and
2 conversion disorder (only present when employed). Tr. 347. With respect to
3 Plaintiff's basic work activities, Dr. Uhl opined Plaintiff's overall severity rating
4 was moderate, finding one marked limitation (in his ability to perform activities
5 within a schedule, maintain regular attendance, and be punctual within customary
6 tolerances without special supervision). Tr. 348. On September 18, 2018, Dr. Uhl
7 completed another psychological/psychiatric evaluation, and, on this occasion, he
8 concluded Plaintiff had several marked limitations despite again finding Plaintiff's
9 overall severity rating was moderate. Tr. 357-360.

10 The ALJ found the opinion of Dr. Uhl "less persuasive," noting it was not
11 entirely consistent with Plaintiff's treatment notes and not supported by Plaintiff's
12 benign presentation. Tr. 22. The ALJ noted Dr. Uhl's opinions relied, in part, on
13 Plaintiff's self-reported symptoms and limitations; however, Plaintiff's description
14 of difficulties was contrary to his endorsement of only mild symptoms of
15 depression and anxiety during appointments with other providers. Tr. 22. The
16 ALJ indicated Dr. Uhl was unaware of this evidence because he reviewed no
17 outside records. Tr. 22.

18 With respect to consistency, the ALJ noted Dr. Uhl's marked limitation
19 findings were inconsistent with Plaintiff's treatment notes as providers typically
20 observed Plaintiff in no distress and found Plaintiff had normal mood, behavior,
21 speech, dress, motor activity, thought processes, alertness, and orientation.
22 Tr. 22, 368 (alert, well appearing, and in no distress; normal mood, speech, dress,
23 motor activity, and thought processes), 371 (same), 373 (same), 409 (same),
24 465 (same), 475 (same), 387 (logical and progressive thought content, congruent
25 with a presenting affect of cooperative and pleasant), 415 (mood, memory, affect
26 and judgment normal), 462 (memory, affect and judgment normal). The ALJ also
27 noted Plaintiff's description of severe symptoms to Dr. Uhl, *see* Tr. 347 (reporting
28 he has panic attacks in almost every new situation), 357 (reporting that some days

1 he was not able to get out of bed, had no motivation, feels depressed, and does not
2 care about what happens that day), contrasted with the mild mental health
3 symptoms he endorsed elsewhere in the record, *see* Tr. 409-410 (feels his
4 symptoms had improved since discontinuing his prescribed medications),
5 415 (feels stable on medication), 465, 474. Tr. 22. The ALJ found persuasive
6 other medical professionals who opined Plaintiff was capable of performing
7 detailed tasks and completing a normal workweek with occasional, superficial
8 contact with others. Tr. 22 citing Tr. 58-60, 71-73. Dr. Uhl's opinions were not
9 consistent with the foregoing medical evidence.

10 Moreover, the undersigned finds it significant that Dr. Uhl's initial report
11 noted the duration of Plaintiff's impairment would persist for only nine months,
12 there was no need for a protective payee, vocational training or services would
13 "minimize or eliminate barriers to employment," and that Plaintiff should be
14 referred to DVR³ as soon as possible. Tr. 349. Accordingly, Dr. Uhl's initial
15 report is also internally inconsistent.

16 With respect to supportability, as noted by the ALJ, Tr. 22, Dr. Uhl reviewed
17 no relevant outside records in preparation of his evaluation. Tr. 345 (reviewed
18 only December 2014 DSHS psychological evaluation which is not a part of the
19 administrative record), 357 (reviewed only his own January 22, 2018 evaluation).
20 However, as discussed above, treatment notes reflect Plaintiff typically presented
21 in no distress; had normal mood, behavior, speech, dress, motor activity, thought
22 processes, alertness, and orientation; and reported only mild mental health

23
24 ³DVR is a statewide resource assisting people with disabilities to prepare
25 for, secure, maintain, advance in, or regain employment. DVR partners with
26 organizations and businesses to develop employment opportunities and serves
27 people who seek meaningful, secure employment but whose disabilities may result
28 in one or more barriers to achieving an employment goal.

1 symptoms. *Supra*. In addition, the only new information provided by Dr. Uhl in
2 his September 18, 2018 report is that Plaintiff was fired from his last job for
3 insubordination in October 2017, Tr. 357, and that there were occasions during the
4 interview portion of the evaluation where Plaintiff was a “smart ass,” Tr. 358.
5 Nevertheless, on this occasion, Dr. Uhl concluded, without explanation, that
6 Plaintiff now had several marked limitations. Tr. 358-359. Dr. Uhl’s opinion that
7 Plaintiff had marked limitations is not supported.

8 The Court finds the ALJ provided sufficient rationale for finding
9 unpersuasive the marked limitations assessed by Dr. Uhl. The ALJ’s conclusion in
10 this regard is supported by substantial evidence.

11 **B. Plaintiff’s Subjective Complaints**

12 Plaintiff challenges the ALJ’s rejection of Plaintiff’s subjective allegations.
13 ECF No. 17 at 3-12. Defendant responds that the ALJ reasonably found Plaintiff’s
14 subjective complaints inconsistent with the evidence of record. ECF No. 18 at 3-8.

15 It is the province of the ALJ to make credibility determinations. *Andrews*,
16 53 F.3d at 1039. However, the ALJ’s findings must be supported by specific
17 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent
18 affirmative evidence of malingering, the ALJ’s reasons for rejecting the claimant’s
19 testimony must be “specific, clear and convincing.” *Lester v. Chater*, 81 F.3d 821,
20 834 (9th Cir. 1996). “General findings are insufficient: rather the ALJ must
21 identify what testimony is not credible and what evidence undermines the
22 claimant’s complaints.” *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915,
23 918 (9th Cir. 1993).

24 In this case, the ALJ found Plaintiff’s medically determinable impairments
25 could reasonably be expected to cause the alleged symptoms; however, Plaintiff’s
26 statements concerning the intensity, persistence and limiting effects of those
27 symptoms were not entirely consistent with the medical and other evidence of
28 record. Tr. 20.

1 The ALJ first determined Plaintiff's allegations of disabling mental
2 impairments were not consistent with the objective medical evidence. Tr. 21.

3 A lack of supporting objective medical evidence is a factor which may be
4 considered in evaluating an individual's credibility, provided it is not the sole
5 factor. *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991); *Robbins v. Soc. Sec.*
6 *Admin.*, 466 F3d 880, 883 (9th Cir. 2006).

7 The ALJ acknowledged Plaintiff had been diagnosed with depression and
8 anxiety and treated with counseling and medications. Tr. 21. However, as
9 discussed in Section A, above, treatment notes reveal providers typically observed
10 Plaintiff in no distress and noted Plaintiff had normal mood, behavior, speech,
11 dress, motor activity, thought processes, alertness, and orientation. *Supra*. As
12 indicated by the ALJ, Tr. 21-22, Plaintiff endorsed mild mental health symptoms
13 from January 2019 through October 2019, and state agency reviewers Jon
14 Anderson, Ph.D., and Renee Eisenhauer, Ph.D., found Plaintiff capable of
15 performing detailed tasks and completing a normal workweek with occasional,
16 superficial contact with others. Tr. 58-60, 71-73.

17 The Court finds the credible objective medical evidence of record
18 demonstrates Plaintiff was not as limited as he alleged in this case.

19 The ALJ next mentioned Plaintiff reported stabilization of his symptoms
20 with therapy and medications. Tr. 21.

21 An ALJ may rely on the effectiveness of treatment to find a plaintiff's
22 testimony unpersuasive. *See Morgan v. Comm'r of Social Sec. Admin.*, 169 F.3d
23 595, 599-600 (9th Cir. 1999) (an ALJ may properly rely on a report that a
24 plaintiff's symptoms improved with the use of medication); *Odle v. Heckler*, 707
25 F.2d 439, 440 (9th Cir. 1983) (noting impairments that are controlled by treatment
26 cannot be considered disabling).

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1 As indicated by the ALJ, Tr. 21, the record reflects Plaintiff reported his
2 symptoms stabilized with therapy and medications, *see* Tr. 370 (patient has been
3 stable), 415 (reported feeling stable on medication), 436 (feeling more stable),
4 464 (symptoms are currently manageable). Moreover, Plaintiff testified at the
5 administrative hearing that he was not taking any medication for his symptoms.
6 Tr. 21, 42.

7 The evidence of record supports the ALJ's finding that Plaintiff's symptoms
8 improved when he was complaint with his medication management.

9 The ALJ also indicated Plaintiff gave inconsistent statements regarding his
10 symptoms and limitations. Tr. 21.

11 In determining credibility, an ALJ may engage in ordinary techniques of
12 credibility evaluation, such as considering claimant's reputation for truthfulness
13 and inconsistencies in claimant's testimony. *Burch v. Barnhart*, 400 F.3d 676, 680
14 (9th Cir. 2005); *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001). When
15 a claimant fails to be a reliable historian, "this lack of candor carries over" to other
16 portions of his testimony. *Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002).

17 The ALJ mentioned Plaintiff alleged he was unable to live independently,
18 Tr. 430, yet he had been living alone in an apartment since October 2016, Tr. 191,
19 and that Plaintiff's allegations of inability to work were inconsistent with his
20 occasional searches for jobs on the computer, 358. Tr. 21. Plaintiff additionally
21 mentioned difficulty with maintaining focus, but the ALJ noted Plaintiff had no
22 apparent problems maintaining focus while playing video games for multiple hours
23 throughout the day, Tr. 345. Tr. 21.

24 The ALJ appropriately found these inconsistencies detracted from Plaintiff's
25 overall believability.

26 The ALJ is responsible for reviewing the evidence and resolving conflicts or
27 ambiguities in testimony. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir.
28 1989). It is the role of the trier of fact, not this Court, to resolve conflicts in

1 evidence. *Richardson*, 402 U.S. at 400. The Court has a limited role in
2 determining whether the ALJ's decision is supported by substantial evidence and
3 may not substitute its own judgment for that of the ALJ even if it might justifiably
4 have reached a different result upon *de novo* review. 42 U.S.C. § 405(g). After
5 reviewing the record, the Court finds that the ALJ provided clear and convincing
6 reasons, which are fully supported by the record, for finding Plaintiff's symptom
7 allegations were not entirely credible in this case.

8 CONCLUSION

9 Having reviewed the record and the ALJ's findings, the Court finds the
10 ALJ's decision is supported by substantial evidence and free of error.

11 Accordingly, **IT IS HEREBY ORDERED:**

12 1. Defendant's Motion for Summary Judgment, **ECF No. 18**, is
13 **GRANTED.**

14 2. Plaintiff's Motion for Summary Judgment, **ECF No. 17**, is **DENIED.**
15 **IT IS SO ORDERED.** The District Court Executive is directed to file this
16 Order and provide a copy to counsel. **Judgment shall be entered for**
17 **DEFENDANT and the file shall be CLOSED.**

18 DATED September 20, 2022.



A handwritten signature in blue ink, reading "Alexander C. Ekstrom", is written over a horizontal line.

ALEXANDER C. EKSTROM

UNITED STATES MAGISTRATE JUDGE